

Black Magic Resources, Inc. and Terry Lawrence and Rod Osborn

B. J. Excavating Company, Inc. and Terry Lawrence and Rod Osborn. Cases 26-CA-14509, 26-CA-14627, 26-CA-14717, and 26-CA-14718

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The principal issues presented in this case are whether employees Terry Lawrence and Rod Osborn were discharged in violation of Section 8(a)(3) and (1) and, if so, whether the Respondents are jointly and severally liable to remedy the unfair labor practices.¹

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions as modified and to adopt the recommended Order as modified and set forth in full below. We agree, for the reasons stated by the judge, that employees Rod Osborn and Terry Lawrence were discharged in violation of Section 8(a)(3) and (1).³ As explained below, we disagree with the judge's finding that Osborn and Lawrence were employed by both Respondents at the time of their discharges, and thus we find it necessary to modify the judge's recommended Order.

Since 1980, Black Magic Resources, Inc. (Black Magic), a coal mining company, has engaged in strip mining operations at the County Line and Graham minesites near Madisonville, Kentucky. Black Magic is signatory to the United Mine Workers Bituminous Coal Wage Agreement of 1988.

Black Magic leases equipment from B. J. Excavating Company, Inc. (B.J.), a nonunion company owned and operated by Robert Wilkerson. The equipment is

leased under an oral agreement between Wilkerson and J. Renfro, Black Magic's president and principal owner. B.J. submits monthly statements to Black Magic for payment showing the type of equipment leased and the hours of operation. The complaint alleged, and the judge found, that Black Magic and B.J. were separate employers.⁴

In November 1990, Renfro hired Terry Lawrence for welding and mechanical work on Black Magic equipment. Lawrence initially worked at the County Line site. In February, Lawrence operated heavy equipment primarily at the Graham site, receiving his work assignments from J. Renfro and Black Magic's part owner, John Sisk. Under his agreement with Renfro, Lawrence was paid \$10 an hour and submitted periodic bills to Renfro for payment. From November 9, 1990, until March 1, 1991,⁵ Lawrence submitted three bills for 112 hours of work. For each of these statements, he received a Black Magic check with no deductions withheld. Lawrence received his last check from Black Magic in March. From October 1990 until May 13, Lawrence worked for B.J. for \$10 an hour operating and repairing heavy equipment at both minesites. Lawrence used both Black Magic and B.J. equipment and tools while performing this work, and he received a B.J. payroll check with standard deductions.

Rod Osborn worked for B.J. from August 1990 until January at the County Line site and from January until May 13 at the Graham site. Osborn's duties for B.J. included fueling, greasing, and cleaning trucks and equipment. Osborn received a B.J. payroll check with standard deductions, and was supervised by both Wilkerson and Renfro. Osborn also attended a safety course for Black Magic employees. In September 1990, Osborn was hired by Renfro to clean Black Magic equipment at night. From September to December 1990, Osborn received \$20 per night in cash for this work. From December 1990 through March, he was paid for the same work with a monthly Black Magic check in advance. Osborn received his last check in March, but continued to work nights as needed in April and May.⁶

As detailed in the judge's decision, Lawrence and Osborn filed grievances with the Union on May 9 and 10, respectively, alleging that Black Magic had violated the contract by failing to pay them contractual wages and benefits and, on May 13, the Union pre-

¹On March 1, 1993, Administrative Law Judge Hubert E. Lott issued the attached decision and erratum, dated March 15, 1993, which has been incorporated into the judge's decision. The Respondents each filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondents' exceptions.

²The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³We further agree for the reasons set forth by the judge that the statement of Robert Wilkerson, the owner of Respondent B. J. Excavating Co., Inc., to Osborn that Osborn would not have been discharged if he had not filed a grievance violated Sec. 8(a)(1). We further note that no exceptions were filed to the judge's findings that Respondent Black Magic Resources violated Sec. 8(a)(2) by having Stewart Renfro, a director of Black Magic and the son of Owner/President J. Renfro, as a member of the mine grievance committee.

⁴The complaint did not allege, nor did the judge find, that Black Magic and B.J. constituted either a single employer or joint employers.

⁵Unless otherwise specified, all dates are in 1991.

⁶Although he received his last Black Magic check in March, Osborn testified without contradiction that he continued to perform the nightwork until his discharge in May. He also testified that he was unable to perform this work during late April because of car trouble and that, due to improving weather conditions, the equipment "didn't need a whole lot of cleaning done."

sented the grievances to Renfro. Later that day, as found by the judge, Renfro caused Wilkerson to discharge Lawrence and Osborn.

The judge found that Lawrence and Osborn were employed by both Respondents and issued a single recommended Order and notice requiring both Respondents to remedy the violations found. The record, however, does not support the judge's findings in this regard.

As set forth above, Lawrence worked for Black Magic from November 1990 until March 1991. He worked for B.J. from October 1990 until his discharge on May 13. Osborn worked for both Respondents from August through September 1990 until his discharge on May 13 but in separate and distinct jobs; he worked for B.J. during the days fueling, greasing, and cleaning trucks and equipment and worked for Black Magic at night cleaning equipment.

As discussed above, employee Lawrence was discharged from B.J. on May 13, and employee Osborn was discharged from B.J. and Black Magic on that date. Clearly, B.J. is responsible for the two discharges from B.J. These discharges were carried out by Wilkerson, an agent of B.J. In addition, Black Magic is responsible for the one discharge from Black Magic. The discharge was ordered by Renfro, an agent of Black Magic.

Finally, we conclude that Black Magic is jointly and severally responsible, along with B.J., for the two discharges from B.J. We recognize that Black Magic and B.J. are separate Employers. However, it is well settled that an employer violates the Act when it directs, instructs, or orders another employer with whom it has business dealings to discharge, lay off, transfer, or otherwise affect the working conditions of the latter's employees because of the union activities of those employees. *Dews Construction Corp.*, 231 NLRB 182 fn. 4 (1977), and the cases cited there. Because Black Magic caused B.J. to discharge Lawrence and Osborn from their jobs at B.J. because they filed grievances, we find that Black Magic is jointly and severally liable with B.J. to make them whole for any loss of earnings they have suffered as a result of these discharges.⁷

ORDER

The National Labor Relations Board orders

A. Respondent Black Magic Resources, Inc., Madisonville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for filing grievances.

(b) Dominating or interfering with the Union in its attempt to administer the contract.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Rod Osborn immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify Osborn in writing that this has been done and that the discharge will not be used against him in any way.

(c) Jointly and severally with B. J. Excavating Company, Inc. make Terry Lawrence and Rod Osborn whole for any loss of earnings they suffered as a result of their unlawful discharges from B. J. Excavating Company, Inc. on May 13, 1991, in the manner set forth in the remedy section of the decision.

(d) Remove Stewart Renfro from the mine grievance committee.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Madisonville, Kentucky facility copies of the attached notice marked "Appendix A."⁸ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁷The General Counsel did not allege, nor did the judge find, that the Respondents denied Lawrence and Osborn an opportunity to join the Union. Accordingly, we have modified the judge's recommended Order and notice to delete the provision that they be given an opportunity to join the Union.

⁸If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

B. Respondent B. J. Excavating Company, Inc., Madisonville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for filing grievances.

(b) Informing employees that they were discharged for filing grievances.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Terry Lawrence and Rod Osborn immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and jointly and severally with Black Magic Resources, Inc., make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Madisonville, Kentucky facility copies of the attached notice marked "Appendix B."⁹ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁹ See fn. 8, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against any employee for filing grievances.

WE WILL NOT dominate or interfere with the Union in its attempt to administer the contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Rod Osborn immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Osborn that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL jointly and severally with B. J. Excavating Company, Inc. make Terry Lawrence and Rod Osborn whole for any loss of earnings they may have suffered as a result of their unlawful discharge from B. J. Excavating Company, Inc., on May 13, 1991, less any net interim earnings, plus interest.

WE WILL remove Stewart Renfro from the mine grievance committee.

BLACK MAGIC RESOURCES, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against any employee for filing grievances.

WE WILL NOT inform employees that they were discharged for filing grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Terry Lawrence and Rod Osborn immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole jointly and severally with Black Magic Resources, Inc. for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify both Lawrence and Osborn that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

B. J. EXCAVATING COMPANY, INC.

Jane Vandeventer, Esq., for the General Counsel.

Albert Spenard, Esq., for the Respondent Black Magic Resources, Inc.

William Whitledge, Esq., for the Respondent B. J. Excavating Company, Inc.

DECISION

STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge. This case was heard in Madisonville, Kentucky, on April 7, 1992, on unfair labor practice charges and amended charges filed by Terry Lawrence and Rod Osborn, individuals, on June 3, August 5, and September 23 and 24, 1991.¹ Complaints issued September 25 and October 2, alleging violations of Section 8(a)(1), (2), and (3) of the Act.

Respondents' answers to the complaints, duly filed, deny the commission of any unfair labor practices.

The parties were afforded an opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of hearing, briefs have been received from the parties.

On the entire record, based on my observation of the witnesses, and in consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Black Magic Resources, Inc. (B.M.R.) is a corporation with an office and place of business in Madisonville, Kentucky, where it is engaged in the mining and sale of coal. During the year ending June 30, Respondent, in the course and conduct of its business, sold and shipped from Respondent's facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Kentucky.

Respondent B. J. Excavating Company, Inc. (B.J.) is a corporation with an office and place of business in Madisonville, Kentucky, where it is engaged in the business of excavating, grading, and site clearing. During the year ending August 31, Respondent, in the course and conduct of its

business provided services valued in excess of \$50,000 for Black Magic Resources, Inc.

The Companys admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Union, United Mine Workers of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. Background

B.M.R. is a coal mining company engaged in strip mining at two sites near Madisonville, Kentucky. The County Line mine and Graham mine have been operated by B.M.R. since 1990. James Renfro is president and owner of B.M.R. and is signatory to the United Mine Workers Bituminous Coal Wage Agreement of 1988 which was in effect at the time of the hearing. The agreement has union-shop and checkoff provisions.

B. J. Excavating is owned and operated by Robert Wilkerson. B.J. is in the business of excavating dirt. It is nonunion and leases equipment to B.M.R., its only customer. Wilkerson signed a union authorization card in September 1990 while doing work for B.M.R. He has been listed as an employee of B.M.R. on its dues-checkoff list submitted to the Union at least until January 1992. Although Wilkerson received no payroll check, dues were submitted to the Union for him by B.M.R.

B.J. has leased equipment to B.M.R. since June 1990 in accordance with an oral agreement between Wilkerson and J. Renfro. There is no written agreement; however, monthly statements showing type of equipment and hours operated are submitted to B.M.R. and paid.

Since 1990, the Union has had difficulty enforcing the contract in several areas: subcontracting classified work, supervisors performing classified work, and nonmembers performing classified work. With the exception of reseeding and fertilizing, the contract forbids the Respondent from engaging in these activities.

In the spring of 1990, District 23, UMW President Joseph Holland visited the County Line minesite and told J. Renfro that the contract prohibits supervisors from performing classified work. Renfro agreed to abide by the contract.

In August 1990, UMW Representative Benny Dukes visited the County Line site and told Part-Owner John Sisk there were more employees working there than B.M.R. had listed on its monthly dues reports. Sisk stated that Dwyatt Cox and Robert Wilkerson were contract employees. Dukes told Sisk that contracting out classified work was prohibited by the contract and that Cox and Wilkerson had to be employees of B.M.R., union members, and receive contract wages and benefits. Dukes proceeded to have Cox and Wilkerson sign union authorization cards.

B. The Alleged 8(a)(2) Violation

Stewart Renfro is the son of J. Renfro, the owner and president of B.M.R. From January through May, Stewart Renfro was a director of the corporation.² He also cosigned corporation business checks and verified and/or processed

¹ All dates refer to 1991 unless otherwise indicated.

² The record is corrected at 232 and other places to read "corporation" instead of "appropriation."

employees' hours for the accountant. During May he lived with his father. From January through the time of the hearing, Stewart Renfro was also listed on the Employer's check-off list as an employee and dues were deducted and submitted to the Union. During the same period, Stewart Renfro was a member of the mine grievance committee along with two other employees. Stewart Renfro testified that the Company never had any grievances filed except those of Lawrence and Osborn. When these grievances were filed in May, the committee discussed them with his father and John Sisk, engineer and part-owner of B.M.R., and decided to withdraw the grievances because they were untimely filed and neither grievant was an employee of B.M.R.

Joseph Holland testified that if the mine grievance committee decides not to refer the grievance to the third step, that's the end of it.

C. Employment Status of Terry Lawrence and Rod Osborn

Terry Lawrence was hired by J. Renfro in November 1990 to do welding and mechanical work on B.M.R. equipment at the County Line site at first and then the Graham site. Renfro told Lawrence that he didn't have enough work to hire him full time and that wouldn't happen until they moved to the Graham site when he would be getting more equipment and putting on more shifts. The agreement between Lawrence and Renfro was to have Lawrence submit periodic bills to Renfro for which he would be paid \$10 per hour. From November 29, 1990, to March 1, Lawrence submitted three bills for 112 hours' work. He was paid with a B.M.R. check signed by Stewart Renfro and no deductions were withheld. During the month of February, Lawrence operated heavy equipment mostly at the Graham site. He was given work assignments by John Sisk and J. Renfro. From October 1990 until May, Lawrence also worked for Wilkerson operating and repairing heavy equipment at the two minesites. He was paid \$10 per hour on a B.J. payroll check with standard deductions. During this time, he used both B.M.R. and B.J. equipment and tools.

In January, Lawrence was operating a scraper when Stewart Renfro approached him and handed him a union authorization card. He was told to sign it, which he did. Stewart Renfro said he would fill out the remainder of the card.

In December 1990, while working for B.J., he was told by Bob Wilkerson to stay out of sight if the Union came around because they were performing contract work.

From February through April, Lawrence complained about his pay (being short) to J. Renfro. He also directed his complaints about lack of health benefits to J. Renfro. In April Wilkerson told Lawrence that J. Renfro would put him on the B.M.R. payroll at the Graham site.

Rod Osborn testified that from August 1990 to January he worked for Bob Wilkerson at the B.M.R. County Line mine fueling, greasing, and cleaning trucks and equipment. From January until his discharge, he worked at the B.M.R. Graham minesite. He worked with B.J. employees and B.M.R. employees and was paid \$5.50 per hour on a B.J. payroll check with standard deductions. From September to December 1990, he worked every night cleaning B.M.R. equipment for J. Renfro. For this work, he was paid \$20 per night in cash. After December 1990 he was paid for the same work with a monthly B.M.R. check, in advance.

During his entire worktime, he took orders from Bob Wilkerson and J. Renfro. On January 27 he attended a safety course for B.M.R. employees at the B.M.R. minesite.

D. Alleged 8(a)(1) and (3) Violations

Terry Lawrence testified that since he had signed a union authorization card in January, he expected to start receiving contract wages and benefits. When this did not happen, he complained to J. Renfro in February, March, and April. However, Renfro would not give him a "straight answer" about his wages or being on B.M.R.'s payroll.

Finally in late April, J. Renfro was distributing "hospital cards" to all the employees but Lawrence who was upset and told J. Renfro that "this stuff is going to have to quit." After that, Lawrence worked everyday but May 9, when it was too wet. On that day, he went to the District 23 union office and asked Secretary-Treasurer Richard Litchfield for help in filing grievances against B.M.R. With Litchfield's help, Lawrence filed grievances contending that B.M.R. had violated the contract by not paying him contract wages and benefits and by allowing exempt employees to perform classified work. After the grievances were completed, Lawrence hand-delivered them the same day to Stewart Renfro at J. Renfro's house.

On Monday, May 13, Lawrence went to the B.J. shop and Wilkerson told him that J. Renfro didn't want him at the jobsite anymore. Wilkerson said he hadn't been treated fairly but there was nothing he could do. Lawrence reported what had happened to Joseph Holland and Benny Dukes and they told him to ask for his job back. Lawrence talked to J. Renfro who told him there wasn't any work for him and there wouldn't be any time in the near future.

Rod Osborn testified that on March 2, just after he returned from a Florida vacation, he and J. Renfro were talking about his vacation in the parking lot. Stewart Renfro came up and asked his father if he was ready for more union trouble. He looked at Terry Lawrence (on the hill) and said there is the other part up there. J. Renfro said he was tired of the union trouble and he wasn't going to take it any more. If there was more, he would shut the place down and send everybody home.

On May 10, Osborn went to the shop and waited for Wilkerson to show up. The weather was bad and Wilkerson did not appear, but Lawrence did. Lawrence told Osborn about his visit to the union office and the grievances he had filed. Later that morning, Osborn decided to file grievances. He went to the union office and met with Joe Holland and Benny Dukes who helped fill out grievance forms. Osborn filed grievances contending that B.M.R. had violated the contract by not paying him contract wages and benefits. He grieved that exempt employees were performing classified work and that he had been laid off since April 20 when less senior employees were working. After the grievances were completed, he hand-delivered them the same day to Stewart Renfro at J. Renfro's house.

Joseph Holland testified that on the afternoon of May 10, he called J. Renfro and requested a meeting with him for May 13. J. Renfro asked Holland what the meeting was about and Holland told him he would rather tell him in person. On May 13, a meeting took place at the District 23 office between J. Renfro and many union officials, wherein Holland told J. Renfro that he was in violation of the con-

tract by paying employees \$10 an hour and contracting out bargaining unit work and that he could not do that. J. Renfro said he would not. Holland told J. Renfro that he was paying Lawrence \$10 per hour less than contract wages. J. Renfro said Lawrence was not his employee. Holland replied that Lawrence was doing bargaining unit work and was his employee.

On May 13, Osborn reported to work and Wilkerson asked him about what he (Wilkerson) had been hearing about Osborn and the Union. Osborn replied that he was tired of being stepped on and he wanted what was his. Wilkerson replied that he didn't know what Osborn was going to do but if he had kept his mouth shut, he would still have a job. Osborn assumed he had been discharged and left.

Bob Wilkerson testified that both Osborn and Lawrence worked for B.J. and that his company had finished coal removal at the County Line mine and all that remained was seeding. They were preparing to move to the Graham minesite and really didn't need Osborn and Lawrence anymore. He thinks that on May 8, J. Renfro came to the County Line site and told him not to use Lawrence anymore because there was no more work for him. He thinks he met with Lawrence on Thursday or Friday or on May 8 and told him they couldn't use him anymore. Wilkerson's affidavit states they met on May 15. Wilkerson further testified that he probably met with Osborn on May 13 and doesn't remember saying, "if he kept his mouth shut." He testified that he became aware of the grievances on either Monday, Tuesday, or Wednesday, he doesn't remember. He stated that he wasn't sure he knew of the grievances on Monday, May 13, and the wasn't sure who told him about the grievances. He finally stated that he wasn't sure the grievances had anything to do with the discharge of Osborn because he wasn't sure he knew about them.

James Renfro admitted that he has had several run-ins with the Union over nonunion employees and supervisors doing bargaining unit work. The Union told him he had to get his house in order. He doesn't remember when he had the conversation with Wilkerson about getting rid of Lawrence but he did remember that when the Union told him everybody on the job had to be in the Union, he decided to get rid of Lawrence when the County Line job was finished.

Renfro also testified that sometime in the past, he thought Lawrence had quit.

III. ANALYSIS AND CONCLUSIONS

A. *The Alleged 8(a)(2) Violation*

I find that B.M.R. interfered with the administration of a labor organization and specifically the mine grievance committee by having Stewart Renfro as a member of that committee. I find that Stewart Renfro, at all relevant times, was a director of the corporation, the son of the owner and a supervisor at B.M.R. and, in that capacity, clearly dominated and interfered with the mine grievance committee in the processing of the grievances of Osborn and Lawrence. Because it was never disputed, I find that Stewart Renfro, as a committee member, interfered with and prevented Lawrence from becoming a union member. *Vanguard Tours*, 300 NLRB 250 (1990). Accordingly, I find that B.M.R. violated Section 8(a)(2) of the Act by the activity of Stewart Renfro.

B. *The Alleged 8(a)(1) Violation*

It is undenied and I find that, on May 13, Robert Wilkerson informed Rod Osborn that he would not have been discharged had he not filed a grievance, in violation of Section 8(a)(1) of the Act.

C. *The Status of Osborn and Lawrence*

Respondent B.M.R. contends that neither Osborn nor Lawrence was an employee of B.M.R. at the time of the discharge, I cannot accept this argument.

Lawrence was hired by J. Renfro and was paid by him until March. After that, he was paid by B.J. but he did bargaining unit work on B.M.R. property and at times repaired B.M.R. equipment using B.M.R. tools and getting work assignments from B.M.R. supervisors as well as B.J. supervisors.

Osborn was paid by B.J. to perform B.M.R. work daily (cleaning trucks and equipment) receiving work assignments from J. Renfro and Robert Wilkerson. In fact, it is undisputed that Osborn was also paid by J. Renfro. Moreover, there is sufficient undisputed evidence to conclude that both employees were discharged by J. Renfro.

Looking at the entire record, it appears that although Wilkerson had his own company, he was actually employed as a supervisor for B.M.R. and that keeping Osborn and Lawrence on B.J. payroll was a crude attempt by B.M.R. to avoid its contract obligations. It should be noted that neither man was allowed to join the Union and neither man ever appeared on the employers' checkoff list to the Union.

Accordingly, I find that both employees were employed by both Companies.

D. *Discriminatory Discharges*

With a history of contract violations and union animus as background, I find that the timing of the discharges was a direct result of the filing of the grievances. I discredit the ambiguous testimony of Wilkerson and J. Renfro on when they decided to discharge Osborn and Lawrence and find that they decided to rid themselves of the only two grievants after they became aware of the grievances.

The Respondent's argument that there was no work is unsupported by the evidence. In fact, it was admitted that the County Line job was not completed for 2 more weeks after the discharges and the Graham site was just starting up. Moreover, B.M.R. hired Billy Mefford on May 13 and Charles Loveday in August 1991. Finally, it is undisputed or admitted that Rod Osborn was discharged for filing grievances and Terry Lawrence was discharged to prevent him from joining the Union.

Based on the above evidence, I conclude that Respondents never satisfied their *Wright Line* burden (251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert denied* 455 U.S. 989 (1982)) of showing that they would have discharged the above employees notwithstanding the filing of grievances.

Accordingly, I find that Rod Osborn and Terry Lawrence were discharged in violation of Section 8(a)(1) and (3) of the Act because they filed grievances.

CONCLUSIONS OF LAW

1. Respondents Black Magic, Inc. and B. J. Excavating Company, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Black Magic Resources, Inc. violated Section 8(a)(2) of the Act by dominating and interfering with a union in its attempt to administer the contract.

4. Respondent B. J. Excavating Company, Inc. violated Section 8(a)(1) of the Act by telling employee Rod Osborn that he was discharged for filing a grievance.

5. Respondents Black Magic Resources, Inc. and B. J. Excavating Company, Inc. violated Section 8(a)(1) and (3) of the Act by discharging Rod Osborn and Terry Lawrence for filing grievances.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed at the contract rate on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). It is further ordered that both employees be allowed to join the Union and that both receive contract wages and benefits from the time they were denied union membership.

They must further remove Stewart Renfro from the mine grievance committee.

[Recommended Order omitted from publication.]